

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>EVA B. WILLIS</b>	)	
Claimant	)	
VS.	)	
	)	Docket Nos. 233,234 & 239,623
<b>STORMONT VAIL REGIONAL MEDICAL CENTER</b>	)	
Respondent	)	
Self Insured	)	

**ORDER**

Respondent appealed the January 29, 2001 preliminary hearing Order for Compensation entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

Claimant alleges injuries to her back, neck, shoulders, arms, legs and foot from three separate accidents during 1998 while employed by respondent. Following the January 26, 2001 preliminary hearing, Judge Avery granted claimant's request for temporary total disability benefits and ordered medical treatment "with Dr. Hatcher until further order or until certified as having reached maximum medical improvement."

Respondent contends that Judge Avery erred. Specifically, respondent alleges that:

1. The Administrative Law Judge exceeded his authority by ordering psychiatric care with Dr. Elizabeth Hatcher when respondent had provided a psychiatrist to evaluate and treat claimant, but claimant refused to accept that psychiatrist and left his office without allowing him to complete his initial evaluation. The Administrative Law Judge should have either appointed a neutral psychiatrist to evaluate and treat claimant or should have allowed respondent to submit the names of three psychiatrists from which claimant could select to provide any necessary treatment.

2. The Administrative Law Judge exceeded his jurisdiction in ordering respondent to provide psychiatric care for a condition not related to her injuries at work.

3. The Administrative Law Judge exceeded his authority by ordering temporary total disability when claimant's condition is stationary and at maximum medical improvement.

4. The Administrative Law Judge exceeded his authority by ordering temporary total disability when claimant resigned her employment and failed to follow through on employment opportunities respondent had available for her.

Conversely, claimant contends respondent's appeal should either be dismissed or that the Order for Compensation should be affirmed. Claimant argues that the Board does not have jurisdiction at this juncture of the claim to decide the medical treatment and temporary total disability issues presented by respondent. In the alternative, claimant argues that, as a direct result of her work-related injuries, she is in need of additional medical treatment and meets the definition of being temporarily and totally disabled and, therefore, is entitled to receive temporary total disability benefits.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. After reviewing the evidence and considering the arguments, the Board concludes the medical treatment and temporary total disability issues raised by respondent are not reviewable at this stage of the proceedings. Therefore, this appeal should be dismissed.

2. This is an appeal from a preliminary hearing order. Therefore, not every alleged error in law or fact is subject to review. Generally, preliminary hearing awards can be reviewed only when it is alleged the Judge exceeded his or her jurisdiction in granting or denying benefits.<sup>1</sup> More specifically, preliminary hearing findings of whether (1) the worker sustained an accidental injury, (2) the injury arose out of and in the course of employment, (3) notice was given or claim timely made, or (4) certain defenses apply, are deemed jurisdictional and subject to review from a preliminary hearing order.<sup>2</sup> The Board has held on numerous occasions that the term "certain defenses" refers to defenses which dispute the compensability of the claim under the Workers Compensation Act and the Kansas Court of Appeals has approved this statutory construction.<sup>3</sup>

3. Respondent alleges that claimant is at maximum medical improvement and that her mental or emotional problems are not directly traceable to her physical injuries, but rather "stem from her perception that she was not treated properly by her employer . . . and by stress caused by having to go through the litigation which she began by filing her claim." In the Board's view, this issue concerns the nature and extent of the injury and disability and not whether claimant suffered a compensable injury. The Board has, for this reason, declined to review the question at this stage of the proceedings.<sup>4</sup>

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<sup>1</sup> K.S.A. 44-551(b)(2)(A).

<sup>2</sup> K.S.A. 44-534a.

<sup>3</sup> Carpenter v. National Filter Service, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

<sup>4</sup> See Wiltfong v. Southwest Caging Corp., WCAB Docket No. 231,588 (Nov. 1999) and Turkin v. EZ Shop, WCAB Docket No. 216,200 (April 1997).

4. Similarly, the issue concerning whether an administrative law judge must, in any given set of circumstances, authorize treatment only from a list of three physicians designated by respondent is not a question which goes to the jurisdiction of the administrative law judge.<sup>5</sup> An administrative law judge has the power to decide this question and has the jurisdiction to decide it rightly or wrongly.<sup>6</sup> Respondent argues the Board has accepted jurisdiction of this issue in the past on an appeal from a preliminary hearing order, citing Naff v. Davol, Inc., WCAB Docket No. 204,405 (May 1997) and Tinoco v. J. C. Penney Co., Inc., WCAB Docket No. 288,844 (Aug. 1998). However, in Naff the majority of the Board held the issue was not jurisdictional on an appeal from a preliminary hearing order. One Board member dissented. In Tinoco, the parties had agreed that the medical treatment, if ordered, should be provided by a particular physician. Respondent was disputing whether the requested treatment was for an injury that arose out of the employment, not the choice of physician should the injury be deemed compensable.

5. K.S.A. 44-534a grants an administrative law judge authority to make a preliminary award of medical and temporary total disability compensation upon a preliminary finding that the injury is compensable. Clearly, claimant suffered injury by accident arising out of and in the course of her employment with respondent. Respondent admits in its brief to the Board that "claimant sustained three separate work related injuries in 1998." The Board finds that the issues raised in this appeal do not give rise to the jurisdictional issues listed in K.S.A. 44-534a and the Judge was within his jurisdiction in ordering preliminary benefits.

**WHEREFORE**, the Board dismisses this appeal leaving the January 29, 2001, Order for Compensation in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2001.

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BOARD MEMBER

c: Robert E. Tilton, Topeka, KS  
James C. Wright, Topeka, KS  
Brad E. Avery, Administrative Law Judge  
Philip S. Harness, Director

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<sup>5</sup> See Weaver v. Buckeye Corp., WCAB Docket No. 244,639 (Aug. 2000) and Briceno v. Wichita Inn West, WCAB Docket No. 211,226 (Feb. 1997).

<sup>6</sup> Allen v. Craig, 1 Kan. App. 2d 301, 564 P.2d 552, *rev. denied* 221 Kan. 757 (1977).